IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3294 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AAMER YUNUS BHAVNAGRI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3294 of 2002
MR MAGANBHAI BAROT for MR YV BRAHMBHATT for Petitioner No. 1
MR PR ABICHANDANI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/07/2002

ORAL JUDGEMENT

Rule. Shri P.R.Abichandani, learned A.P.P. waives

service of Rule.

2. The petitioner - accused Dr.Aamer Yunus Bhavnagari is a Dental Surgeon. One Hiteshbhai Vinodbhai Mehta lodged F.I.R. I-117/2002 at 18.45 hours on 28.2.2002 before the Ellisbridge Police Station for the offence punishable u/s.302, 114 I.P.Code and Section 25(1)(c) of the Arms Act regarding the incident in question which took place on the same day i.e. on 28.2.2002 at 15.15 hours. It is alleged in the F.I.R. that there was firing from the terrace by the Muslims who gathered on the terrace of Delight Flats and in that firing his friends Ashok Hiralal Arya and Prashant Nair received bullet injuries and died.

3. Investigation was started in that case by the then I.O. P.I. Shri J.K.Vachhani. Dr.Yunus Mohmedusman Bhavnagari, father of the present applicant, who is also Dental Surgeon and National Award Winner Shooter in Riffle competition apprehended that the police is going to arrest him for the murders of Shri Ashok Arya and Prashant Nair and causing injury to Hiten Thakkar, therefore, he first approached the City Sessions Judge, Ahmedabad for anticipatory Bail by way of Criminal Miscellaneous Application No.513 of 2002. The said Application was filed on 14.3.2002. In his Application he has straightway come out with a case of self defence, that apprehending danger to his life and lives of his family members and the property in his self defence he has fired shots. He has also submitted an Application dated 7.3.2002 addressed to the Police Inspector of Ellisbridge Police Station to that effect. This very case of self defence was pleaded by the learned Counsel for the petitioner accused before the learned City Sessions Judge, Ahmedabad, who by his Judgment and order dated 18.3.2002 rejected his anticipatory bail Application on the ground that when the investigation is going on then at this stage it is not proper to grant anticipatory bail to the accused.

4. Thereafter he had moved Criminal Miscellaneous Application No.1844 of 2002 before this Court and learned Senior Advocate Shri Maganbhai Barot, after arguing the matter for some time, on the point of self defence, sought permission to withdraw that anticipatory bail Application. Thereafter, Dr.Yunus Mohmedusman Bhavnagari was arrested on 31.3.2002.

5. In the instant case the charge sheet was required to be filed within 90 days as per the provisions of Section 167(2) Cr.P.C., but instead of filing charge

sheet against the accused it appears that Shri Shatish Sharma, Addl. Police Commissioner, Sector - I, Ahmedabad City directed the present I.O. P.I.Shri Joshi to file "C" Summary in connection with F.I.R. No.117 of 2002 filed against Dr.Yunus Bhavnagari and two other accused Dr.Aamer Yunus and Aslam Harun Golibar.

6. It seems that as per the direction of his superior officer P.I.Shri N.H.Joshi, who took over investigation in the matter on 26.4.2002, submitted his report u/s.169 Cr.P.C. before the Court of Metropolitan Magistrate, Court No.15, Ahmedabad, for discharging all the three accused i.e.(1) Dr.Yunus Bhavnagar, (2) Dr. Aamer Bhavnagar and (3) Aslam Harun Golibar.

7. The hearing of that application was adjourned from time to time by the learned Metropolitan Magistrate. It is stated at the bar by learned Senior Advocate Shri Maganbhai Barot that one Shri Chentan Shah, Advocate, who claimed to be the witness to the incident, has filed an application before the learned Magistrate to hear him before taking final decision in the matter and the hearing of that Application is kept today itself.

8. It may be stated that the present applicant accused Dr.Aamer Yunus, also apprehending his arrest in connection with the aforesaid offences of murder, filed anticipatory Bail Application first before the learned City Sessions Judge on 1.4.2002. The same was rejected by the learned City Sessions Judge, Ahmedabad on 5.4.2002 by observing that going through the Police papers at this juncture it is not possible to come to the conclusion that the accused are falsely involved in the case. Therefore, he rejected the anticipatory bail Application.

9. The present applicant - accused thereafter approached this Court by way of Criminal Miscellaneous Application No.2221 of 2002 and the said Bail Petition was withdrawn by learned Senior Advocate Shri Maganbhai Barot, after arguing it on the point of self defence.

10. Thereafter, the present petitioner - accused was arrested on 28.4.2002. After his arrest he approached the learned Judge by way of Regular Bail Application No.1477 of 2002 which was rejected by the learned Judge on 6.6.2002. Hence, this Regular Bail Application is filed at the instance of present applicant - accused Dr.Aamer Yunus Bhavnagari after his arrest.

11. Learned Senior Advocate Shri Maganbhai Barot appearing for Shri Y.V.Brahmbhatt for the petitioner

accused vehemently submitted that when the main accused Dr.Yunus Bhavnagari is enlarged on Bail by the learned Metropolitan Magistrate on 2.7.2002 on failure of the police to file charge sheet within the prescribed period of 90 days of his arrest then regular bail should not be denied to the present accused whose role is not that serious. He submitted that the serious allegations are against the main accused Dr.Yunus Bhavnagari, father of the present applicant - accused of firing gun shots from his gun whereby two persons lost their lives and one got injury, who is now enlarged on bail.

12. If the main accused was granted regular Bail by the learned Judge on any other ground, and if such bail order was challenged before the higher court then the higher Court would have definitely considered the legality and validity of such bail orders as and when application for cancellation of bail was filed. But where in such type of cases in view of the judgments of the Honourable Supreme Court right from Sanjay Dutt's case (reported in 1994 (5) SCC 410) which is consistently followed by the Hon'ble Supreme Court till today, once the accused, who is enlarged on bail on the ground of charge sheet not filed within the prescribed time limit by the Police then the accused get blanket bail and such bail cannot be cancelled on any ground whatsoever. In view of this when the main accused is enlarged on bail then there is no question of keeping the present accused in jail any more. It is true that the present applicant accused is arrested on 27.4.2002 and charge sheet is required to be filed within 90 days i.e. on or before 27.7.2002, but in my considered opinion to detain the present petitioner - accused any more in jail would be travesty of justice.

13. In view of the above discussion this petition is allowed. The petitioner Dr.Aamer Yunus Bhavnagari is ordered to be released on Bail in connection with CR No.I-117/2002 registered with Ellisbridge Police Station, Ahmedabad, on his executing a bond of Rs.5000/- (Rupees five thousand only) with one surety of like amount to the satisfaction of the lower Court and subject to the condition that he shall -

(a) not take undue advantage of his liberty or abuse his liberty;

(b) not act in a manner injurious to the interest of the prosecution;

(c) maintain law and order;

(d) mark his presence before the Ellisbridge Police station, Ahmedabad on 1st and 15th of every month between 9.00 a.m. to 2.00 p.m. till the charge sheet is filed.

(e) not leave the local limits of District Ahmedabad without the prior permission of the Sessions Judge at Ahmedabad.

(f) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(g) surrender his passport, if any, to the lower Court within a week.

14. If breach of any of the above conditions is committed, the Sessions Judge at Ahmedabad will be free to issue warrant or take appropriate action in the matter.

15. Bail before the lower Court having jurisdiction to try the case.

16. However, before parting, I must state that in this case present I.O. of the case P.I.Shri N.H.Joshi and his superior officer Shri Shatish Sharma, Additional Police Commissioner, Sector - I, Ahmedabad city, have tried to overreach the process of law by submitting report u/s.169 Cr.P.C. before the Court of Metropolitan Magistrate, requesting the learned Metropolitan Magistrate to discharge all the 3 accused (1) Dr.Yunus Mohmedusman Bhavnagari, (2) Dr.Aamer Yunus Bhavnagari and (3) Aslam Harun Golibar for the serious offences like murder and u/s. 25 (1)(c) of the Arms Act.

It may be stated that anticipatory bail Applications filed by both, Dr.Yunus Bhavnagari (main accused) and the present applicant - accused Dr. Aamer Bhavnagari were contested tooth and nail by the previous I.O. P.I.Shri Vachhani before the Sessions Court as well as before this Court, through the APPs. But, considering the prima facie case both the Courts below turned down their Anticipatory Bail Applications as it was not proper on the part of the Court to express any opinion at this stage, regarding theory of self defence pleaded by the accused. The denial of anticipatory bail Application suggests that both the Courts, Sessions Court as well as this Court, were prima facie not convinced at all with the theory of self defence advanced at this stage by the

accused. They had to make their case good before the learned Judge at the time of trial after the entire evidence of the prosecution witnesses is over.

It is unfortunate that inspite of this, Shri Shatish Sharma, Additional Police Commissioner, Sector I, Ahmedabad City directed the present I.O. P.I.Shri Joshi, not only to submit his Report u/s.169 Cr.P.C. before the Court of learned Metropolitan Magistrate, but also directed him to hand over licence arms recovered from Dr.Yunus Bhavnagari which was alleged to have been used in the commission of offence. While doing so the Additional Police Commissioner Shri Shatish Sharma had shown scant regards to the proceeding before the Sessions Court as well as this Court, in bail matters, and the orders passed on it. No doubt it is true that both the Bail Applications were permitted to be withdrawn by this Court on the request made by the learned Counsel for the petitioner accused, but any reasonable and prudent man would have considered the orders in its proper perspective, which Mr.Sharma failed to do it.

Both the reports dated 24.6.2002 submitted by Shri Shatish Sharma, Addl. Police Commissioner, Sector I, Ahmedabad City and Report dated 26.6.2002 submitted by the present I.O. P.I. Shri Joshi which are placed on record of this case show that they have not at all applied their mind to the fact that earlier anticipatory bail Applications filed by both the accused were rejected not only by the Sessions Court, but also rejected as withdrawn by this Court. Having regard to the facts and circumstances of the case I am of the considered opinion that both, Shri Shatish Sharma, Addl. Police Commissioner, Sector - I, Ahmedabad City and P.I. Shri N.H.Joshi, by submitting the Report dated 24.6.2002 and 26.6.2002 respectively, have tried to interfere with the administration of justice and also tried to overreach the process of law by showing scant regard to the orders passed by this Court and Sessins Court in Bail proceedings, which is a serious misconduct.

Therefore, prima facie I am of the considered opinion that by submitting the aforesaid report both of them have committed Contempt of Court, for which even contempt proceedings could have initiated against them. However, on the request made by learned A.P.P. Shri Abichandani on the assurance given by Shri Joshi, that in future this will not be repeated, I have not thought it fit to initiate any such proceedings.

However, I am fully convinced that attempt made

by both the Police Officers Shri Shatish Sharma, Addl. Police Commissioner, Sector - I, Ahmedabad City and P.I. Shri N.H.Joshi trying to interfere with the administration of justice by submitting the report dated 24.6.2002 and 26.6.2002 is a serious misconduct for which both the Police Officers should be dealt with strictly by way of Departmental proceeding by the State Government. When the last day for filing charge sheet was 30.6.2002, they submitted such reports at the last minute and allowed the main accused to get the bail.

20. P.I. Shri N.H.Joshi, who is present before the Court submitted that he had to submit his report because of the order of his Superior Officer Shri Shatish Sharma, Addl. Police Commissioner, therefore, he may be pardoned. It is true that Shri Joshi had to submit his report dated 26.6.2002 before the learned Metropolitan Magistrate for discharging all the 3 accused as per order of the Addl. Police Commissioner, but after all he is Police Inspector, he should have applied his own mind and after considering the entire facts and circumstances of the case, including the orders passed by this Court and Sessions Court, if he was on his own convinced then only he should have submitted his report. Of course his misconduct is of a less gravity, but certainly he cannot escape from his responsibility on such ground. Hence the State Government should immediately take serious action, including the suspension from service, against both the officers Shri Sharma and Joshi.

If the Government does not take action in the matter then in future the Police Officers would start overreaching the orders of Courts, which would not be in the interest of any one. With these observations and direction this petition is allowed.

I must also state that 8 years back in a detention matter when the writ petition filed by the detenu was dismissed by the Division Bench of this court (Coram : N.J.Pandya and B.J.Shethna, JJ.) on the 3rd day of passing that order the detention order was withdrawn and detenu was released by the Authority, which was most contemptuous. It is desirable that in future the State Government shall take care of all such type of matters and take serious action against such officers.

The Registry shall forward the copy of this order to the Chief Secretary of the Sate of Gujarat immediately for taking action against both Shri Sharma and Joshi forthwith.

Rule made absolute accordingly. Direct service permitted.

Date : July 08, 2002 (B.J.Shethna, J.)

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